Petition

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

HARRY J. MANGRUM, JR., Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Brief for Petitioner

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QUESTIONS PRESENTED

I

Whether the receipt of banknotes made non-redeemable by a series of Congressional acts, none of which provided that the same could remain legal tender, and the effect of which is to (1) totally divest the Congress of any power to create money or regulate its value, and (2) render such notes violative of the Banking and Monetary Codes, requires compliance with the income reporting provisions of the Revenue Code?

II

Whether the rights guaranteed the tax supported New Majority of the U.S. population by the Equal Protection Component of the Fifth Amendment are to be denied the minority class of net taxpayers?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED..... i

TABLE OF AUTHORITIES.....

Cases.....iii

Statutes and Regulations.....vii

Other Authorities.....vii

OPINION BELOW.....2,66

JURISDICTION..... 2

PROVISIONS INVOLVED.....2,3

STATEMENT OF THE CASE..... 3

REASONS FOR GRANTING THE WRIT.....6,31

CONCLUSION..... 62

APPENDIX..... 66

PROOF OF SERVICE..... 72

TABLE OF AUTHORITIES

Cases	Page
A. Mangano v. Hamilton, 299 US 40 (1934)	38
Baker v. Carr, 369 US 186 (1962)	53
Bolling v. Sharpe, 347 US 497 (1954)	39-41, 60,61
Bronson v. Rodes, 7 Wall 229 (1869)	15
Brushaber v. Union Pacific R. Co., 240 US 1 (1916)	37,59, 60
Butler v. Horwitz, 7 Wall 229 (1869)	15
Califano v. Boles, 443 US 282 (1979)	47
Califano v. Westcott, 443 US 76 (1979)	46
Carmichael v. Southern Coal & Coke Co., 301 US 495 (1937)	38
Carrington v. Rush, 380 US 89 (1965)	51
Cipriano v. City of Houma, 395 US 701 (1969)	51
Craig v. Boren, 429 US 190 (1976)	48
Craig v. Missouri, 4 Pet. 410 (1830)	14

Cases — Page

Davis v. Mann,
377 US 691 (1964) 51

Delaware Tribal Business Comm. v. Weeks,
430 US 73 (1977) 45

Frontiero v. Richardson,
411 US 677 (1973) 43

Gold Clause Cases,
294 US 240, et seq. (1935) 17

Gomillion v. Lightfoot,
364 US 339 (1960) 50

Gordon v. Lance,
403 US 1 (1971) 52

Graham v. Richardson,
403 US 365 (1971) 45

Gray v. Sanders,
372 US 368 (1967) 51

Hampton v. Mow Sun Wong, 44,45,
426 US 88 (1976) 61

Harper v. Virginia Board of Elections,
383 US 613 (1966) 51

Heiner v. Donnan,
285 US 312 (1932) 37, 60

Hepburn v. Griswold,
8 Wall 603 (1870) 28

Hoeper v. Tax Commission,
284 US 206 (1931) 37

Hunter v. Erickson,
393 US 385 (1969) 52,53

Cases Page

Johnson v. Robinson,
415 US 361 (1974)..... 44

Kramer v. Union Free School Dist.,
391 US 621 (1969)..... 51

Legal Tender Case,
110 US 421 (1884).....13,15-18,25,26

Legal Tender Cases,
12 Wall 457 (1871)..... 14,15,16,18,28

Mathes v. C.I.R.,
576 F.2d 70 (5th Cir. 1978)..... 26

Melton v. Kurtz,
575 F.2d 547 (5th Cir. 1978)....58,61

Milam v. United States,
524 F.2d 629 (9th Cir. 1974)... 26,27

Nichols v. Coolidge,
274 US 531 (19)..... 37

Norman v. Baltimore & O. R. Co.,
294 US 240 (1935).....12,17

Nortz v. United States,
294 US 317 (1935)..... 17

Ochoa v. Hernandez y Morales,
230 US 139 (1913)..... 37

Osborn v. Nicholson,
13 Wall 654 (1872)..... 32

Panama Refining Co. v. Ryan,
293 US 388 (1935)..... 30

Perry v. United States,
294 US 330 (1935).....17,28

Cases — Page

Reynolds v. Sims,
377 US 533 (1964) 50

Schechter Poultry Corp. v. United States, 295 US 495 (1935) 30

Schneider v. Rusk,
377 US 163 (1964) 41

Shapiro v. Thompson,
394 US 618 (1969) 42

The Antelope,
10 Wheat 66 (1825) 36,37

Trebilcock v. Wilson,
12 Wall 687 (1872) 15

Tyler v. United States,
281 US 497 (19) 37

United States v. Anderson,
584 F.2d 369 (10th Cir. 1978) ... 26

United States v. Clark,
445 US 23 (1980) 47

United States v. Wangrud,
533 F.2d 495 (9th Cir. 1976) 26

U.S. Dept. of Agriculture v. Moreno,
413 US 578 (1973) 43

Weinberger v. Wiesenfield,
420 US 636 (1975) 44

Wesberry v. Sanders,
376 US 1, (1964) 50

Constitutional Provisions — Page

ARTICLE I

Section 8..... 14

Section 10..... 13

FIFTH AMENDMENT.....31-61

Statutes and Regulations

12 U.S.C. Sec. 411.....11, 26,27

12 U.S.C. Sec. 413..... 18

26 U.S.C. Sec. 6012(a)(1)(A)..... 9

26 U.S.C. Sec. 7203..... 9

31 U.S.C. Sec. 314..... 10

31 U.S.C. Sec. 392
(See Coinage Act of 1965, below)

31 U.S.C. Sec. 405a-1..... 10,22

31 U.S.C. Sec. 773b..... 8,25,26

31 U.S.C. Sec. 821.....10,11

Act of March 3, 1965;
PL 89-3, 79 Stat. 5..... 18,29

Coinage Act of 1965
PL 89-91, 79 Stat. 255....20,21,26,27

Silver Certificate Act of 1967
PL 90-89, 81 Stat. 77.....21,30

Act of March 18, 1968
PL 90-269, 82 Stat. 50.....22,30

Statutes and Regulations — Page

Par Value Modification Act of 1973
PL 93-110, 87 Stat. 352.....11,24

31 CFR Part 55..... 10

Legislative Authorities

U.S. Cong. & Adm. News:

1965.....18,19,20

1968.....22,23

1973.....11,25

1976..... 29

Other Authorities

16A Am. Jur.2d,Constitutional Law, .. 49

Free To Choose, M. Friedman
(New York, 1980)..... 36

Business Week, May 12, 1980 36

Wall Street Journal, Dec.10,1979.....34,35

Random House Dictionary
(New York, 1978)..... 54

Webster's Third New International
Dictionary, Unabridged,
(Springfield, Mass. 1968).....9,53

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner HARRY J. MANGRUM, JR., respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in its Case No. 80-1474 on April 24, 1981.

OPINION BELOW

The opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on April 24, 1981. A timely petition for rehearing was denied on May 26, 1981 and this petition was timely filed within 60 60 days thereafter. Jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

PROVISIONS INVOLVED

The text of the constitutional provisions, statutes and regulation which the case involves are set forth in the Appendix. These are the United States Constitution, Art. 1, Sec. 8, Sec. 10, the Fifth and Sixteenth Amendments; 12 U.S.C. Secs. 411, 413; 26 U.S.C. Secs 6012(a)

(1)(A), 7203; 31 U.S.C. Secs. 314, 405a-1, 773b; The Act of March 3, 1965, PL 89-3, 79 Stat. 255, The Coinage Act of 1965, PL 89-91, 79 Stat. 255 (31 U.S.C. Sec.392) Silver Certificate Act of June 24, 1967, PL 90-29, 81 Stat. 77, Act of March 18, 1968, PL 90-269, 82 Stat. 50, Par Value Modification Act of September 21, 1973, PL 93-110, 87 Stat. 352; and 31 CFR Part 55.1.

STATEMENT OF THE CASE

On April2, 1980, the grand jury in Las Vegas, Nevada, indicted the Petitioner for Failure to File income tax Returns reflecting the receipt of a gross income of approximately $29,486.00 in calender year 1973 (Count One) and approximately $5,899.00 in 1974 (Count Two) for which he was required to make and file returns with the District Director of Internal Revenue at Reno, the Director of the Western Regional Service Center at Ogden,

Utah, or any other proper officers, and had wilfully and knowingly failed to do so, in violation of 26 U.S.C. Sec. 7203 (a misdemeanor). At the May 19th calender call, the petitioner informed the District Court Judge that he was not prepared to proceed with the jury trial, and upon being denied additional time, waived it. Trial to the District Court, sitting without a jury, commenced on May 20, 1980.

Through Patricia Hartey, a tax examiner and business record custodian in the accounting division at the IRS's Ogden Service Center, the Government proved that its Exhibits 5, 5a, and 6, were Form 1040 Tax Returns filed by the petitioner for the years in question, which on cross-examination were shown to be of a type referred to by IRS employees as "protest" returns, of which the witness had seen "quite a few" in the last 10 years but refused to be any more precise. Copies

of the petitioner's bank account records for the period in issue became Exhibits 11 through 64. From them, Russell W. Olsen, a Revenue Agent claiming expertise as a records examiner and "summary" witness estimated the petitoner's gross income as being 31, 790.81 in 1973, and 7, 529.52 in 1974, for which he should have filed "married filing separately", more than the "$2050" statutory minimum then applicable to the years in question.

At the close of the Government's case, the petitioner filed a Motion to Dismiss the Indictment for failure to charge an offense which the trial judge denied as untimely under Local Practice Rule 8, but allowed it to be presented and argued as a Rule 29(a),rather than a Rule 12(b), motion, then denied, following which the petitioner testified briefly in his own behalf.

Having found him guilty, on June 30,

1980, the taxpayer-petitioner was sentenced to pay a fine of $5,000 on the first count and serve a term of one year on each count, with all but six months of the term imposed on the first count suspended, to be followed by two years probation. Bond was set at $5,000 for the ensuing appeal, and posted immediately after the sentence hearing.

After denial of his petition for rehearing the Court of Appeals for the Ninth Circuit set bail in the sum of $1,000 pending final disposition by this Court, and the petitioner remains at liberty on bail.

REASONS FOR GRANTING THE WRIT

(1) If the opinions of the Court(s) of Appeals in this, and similar cases, to the effect that the post 1968 non-redeemable Federal Reserve banknotes are dollars as defined by United States laws are not in direct conflict with the applicable rul-

<u>ings of this Court, then a question of paramount importance in federal law, involving the abdication of Congressional powers over the monetary system and national financial structure has been decided that has not yet been, but which properly must be, settled by this Court.</u>

The bond market is in shambles. Long-term mortgages are being rapidly outmoded; and savings and loan institutions are an endangered species. The collossal federal debt is becoming increasingly shorter in term, "rolled over" at higher rates of interest. When adjusted for inflation, the recent 1000+ high of the Dow-Jones stock market index becomes an embarassing 104. The free market price of gold having soared over $800 per ounce in terms of Federal Reserve paper, the "Fed", while claiming to have shifted to a "monetarist" policy of limiting the creation of new currency

in response to pressures from European central bankers in October 1979, has forced interest rates to shockingly high levels. Government leaders who once paniced and imposed wage and price controls (economic dictatorship) to fight inflation of 3-4 percent, now speak of 6 to 8 percent inflation as a laudable goal, promising disaster in lieu of catastrophe to what has become a nation of "Fed-watchers" who believe only what they see, judging from the almost instantaneous reaction of the bond and stock markets to weekly changes in the supply of paper banknotes and accounting entries in the banking system, known in the trade as "M1B".

31 U.S.C. Sec. 773b, adopted by Congress in the early 'thirties to prevent domestic holders of the dollar from seeking redemption in gold rather than silver coin, revoked Sovereign consent to be sued on the currency,forestalling the presenta-

tion of any constitutional challenges except by way of a plea in defense to a prosecution for a violation of the type here involved, or possibly for counterfeiting.

26 U.S.C. Sec. 7203, requiring the filing on income tax returns on penalty of being punished for a misdemeanor compels the taxpayer to search elsewhere to determine whether any return is required for a given year; specifically, to 26 U.S.C. Sec. 6012(a)(1)(A) which, as amended in 1971 and effective for 1973 and 1974, stated that anyone with a gross income of "$2050" fell within the requirements, in turn raising the question as to what is a "$"?

Webster's Third New International Dictionary, Unabridged, (G.& C. Merriam Co., Springfield, Mass. 1968) p. 1458, defines "$" as being the symbol universally used for the monetary unit of all nations that describe their money as a "dollar" and, with reference to the United States dollar,

"according to the law of 1934= 15.238 grains or 0.888671 gram fine gold." That provision still appears valid as 31CFR Part 55, established by Presidential decree under the Act of January 31, 1934, 48 Stat. 1730. 15.238 grains of 9/10s fine gold is equal to 13.71 grains of unalloyed gold and 35.01 parts of a troy ounce, that is, 35 dollars U.S. are alleged to be the equivalent of one troy ounce of .999 fine gold by the current Code of Federal Regulations. By 31 U.S.C. Sec. 405a-1 the monetary value of silver for coinage purposes remains set precisely at "$1.292929292" where it was first fixed by the Continental Congress under the Articles of Confederation, and reset by Congress in 1792.

31 U.S.C. Sec. 314 states that the standard unit of value shall be a dollar of gold of the weight specified in Section 821, and makes it the duty of the Treasury Secretary to maintain the fixed parity

value of all money issued or coined by the U.S. with that standard.

The dollar having undergone some legally dubious devaluations since August 15, 1971, Presidential authority under 31 U.S.C. Sec. 821 having expired, the Par Value Modification Act of September 21, 1973, PL 93-110, 87 Stat. 352, re-regulated the U.S. dollar at "0.828948 Special Drawing Right or, the equivalent in terms of gold, of forty-two and two-ninths dollars per fine troy ounce of gold" although the "private" market price was then much higher. U.S. Cong. & Adm. News, 1973, p. 2061.

Authority for the issuance of Federal Reserve banknotes was set forth in the Federal Reserve Act of December 23, 1913, 38 Stat. 265, and, as amended by the Act of January 30, 1934, 48 Stat. 337, now appears as 12 U.S.C. Sec. 411, stating that all such banknotes "...shall be obligations

of the United States....They shall be redeemed in lawful money at the Treasury Department.... or at any Federal Reserve bank." From 1914 to 1934, all Federal Reserve banknotes bore the inscription:

> "Redeemable in Gold on demand at the United States Treasury or in Gold or lawful money, at any Federal Reserve bank. Will pay to the bearer on demand XX dollars."

Congress's Joint Resolution of June 5, 1933, declared that all obligations giving the obligee a right to payment in gold (rather than silver) were obstructive of its power to regulate the value of money and inconsistent with its policy of forever maintaining the equal power of every dollar. See Norman v. Baltimore & O. R. Co., 294 US 240, footnote 2, at p. 291. After 1934, Federal Reserve banknotes were inscribed:

> "This note is legal tender for all debts public and private and is redeemable in lawful money at the United States Treasury, or at any Federal Reserve bank. Will pay to

bearer on demand XX dollars."

Being an obligation to pay real U.S. dollars of "lawful" silver to domestic, or gold to foreign, bearers, such paper substitutes constitutionally could simultaneously circulate as "legal" tender with the real money. The Legal Tender Case, infra.

Since 1968, Federal Reserve banknotes have borne the legend: "This note is legal tender for all debts, public and private." They do not even pretend to obligate either the issuing bank(s) or the United States.

As for the question as to whether, in view of the fact that the Constitution does not deny Congress the power to "emit bills of credit" as Art. I, Sec. 10 does the states, Federal Reserve banknotes of the post 1968 vintage might be defined as such, this Court long ago answered in the negative when Chief Justice John Marshall clearly defined a "bill of credit" as

any instrument by which a government promises to pay money at a future time, that is, paper which is redeemable. Craig v. Missouri, 4 Pet. 410 (1830).

It is only paper currency bearing the Government's obligation to redeem the same in real gold or silver coin that can be made "legal" tender under the Constitution. The Legal Tender Cases, (Knox v Lee and Parker v. Davis) 12 Wall. 457 (1871). As the majority opinion by Justice Strong stated (12 Wall., 553):

> "...The Legal Tender Acts do not attempt to make paper a standard of value. We do rest their validity upon the assertion that their omission is coinage, or regulation of the value of money; nor do we assert that Congress may make anything which has no value- money. What we do assert is that Congress has power to enact that the government's promises to pay money shall be for the time being equivalent in value to the representative of value determined by the coinage acts or to multiples thereof. .....It is, then a mistake to regard the Legal Tender Acts as either fixing a standard of value or regulating money values, or making that money which has no value." (emphasis added)

Eight months later, in a 7-2 decision, the Court greatly diluted the impact of the Legal Tender Cases by reaffirming Bronson v. Rodes, 7 Wall. 229, and Butler v. Horwitz, 7 Wall. 229 (1869) in Trebilcock v. Wilson, 12 Wall. 687 (1872) wherein it ruled that a note dated prior to the Legal Tender Acts and payable "in specie" could only be paid in "so many gold or silver dollars" and not in Legal Tender.

Some dicta in the Legal Tender Case (Juilliard v. Greenman) 110 US 421 (1884) has been forged by the Circuit Courts of Appeals into a boilerplate shield insulating the post 1968 inflationary illegal tender from attack by rebellious taxpayers, as will be seen below. However, the Circuits have been uniformly wrong in their interpretation, so much so as to have effectively reversed this Court, for as the majority opinion by Justice Gray precisely defined the only issue presented in the

Legal Tender Case, supra, 110 US at 437, thus:

> " The single question, therefore... is whether notes of the United States, issued in time of war, under Acts of Congress declaring them to be a legal tender in payment of private debts, and afterwards in time of peace redeemed and and paid in gold coin...then re-issued under the Act of 1878, can, under the Constitution...be a legal tender.." (emphasis added).

Thus, on its facts, it is clear that the Legal Tender Case, supra, stands solely for the proposition that fully convertible currency is an acceptable substitute which may simultaneously circulate with real money of gold or silver coin. As Chief Justice Chase had pointed out in his dissent in the Legal Tender Cases, supra, 12 Wall., at 579, so long as paper currency is redeemable it doesn't need to have such words on it and adding the inscription "legal tender" actually hurts its value and can only serve ultimately dishonest purposes.

Nothing in the Gold Clause Cases: Norman v. Baltimore & O. R. Co., 294 US 240; Nortz v. United States, 294 US 317; and Perry v. United States, 294 US 330 (1935) suggests that the foregoing analysis of the rule decided in the Legal Tender Case, supra, is incorrect. In fact, the Court's extremely hostile reaction to the Government's contention that having the power to borrow and regulate the value of money meant that Congress could pledge the credit of the United States and later alter the terms of its obligations as a means of repudiating federal debt through inflation, spoken by Chief Justice Hughes in Perry v. United States, supra, 294 US at 350-351 indicates that it is most accurate.

The Gold Clause Cases, supra, did not hold that anything Congress desires can be made "legal" tender; they merely ruled that private contract provisions could not impair Congress's power to regulate the

the value of money in cases where its acts are designed to restore and maintain its worth, and that paper convertible into silver by domestic, or gold by foreign, bearers could still serve as circulating substitutes for the real money as had been decided in the Legal Tender Cases and the Legal Tender Case, supra.

In the light of the foregoing, it is easy to see why no act of Congress has ever made non-redeemable Federal Reserve banknotes "legal" tender because it would clearly be unconstitutional on its face according to the very well settled rules of this Court.

By the Act of March 3, 1965, PL 89-3, 79 Stat. 5, the Federal Reserve Act was amended by striking from 12 U.S.C. Sec. 413 the words requiring the maintenance of a 25 percent gold reserve to support deposits. According to the Senate Banking and Currency Committee's report (U.S. Cong.

& Adm. News, 1965, pp 1353-1373) the intent was to free some $5 billion in gold to allow an expansion in the money supply to meet the needs of a "sound and growing" economy while giving the government time to solve its severe balance of payments problems before too much gold was lost, while retaining the gold backing for the banknotes so as to provide the "necessary ..sufficient restraint on monetary expansion to prevent...consequent inflationary developments or losses of gold." (op. cit. at 1355; emphasis added). The Committee said there were three major reasons for compelling the Federal Reserve bankers to maintain gold reserves against both their deposit liabilities and banknotes in circution (at p. 1359):"(1) To assure the redeemability of money; (2) to serve as a limit on domestic credit and monetary expansion; and (3) maintain a reservoir of gold to meet deficits in international

payments" ...for the single purpose of maintaining that degree of "confidence in the stability of the value of the dollar ...essential for the operation of our financial system" as "(e)xcessive creation of money..results in domestic inflation.." The Senators further stated that "(i)mposing a limit on monetary expansion is the most important function of reserve requirements.."

The Committee also confessed that specie reserve requirements were "barrier to the adoption of unsound policies" and "a signal of the need to reappraise the developing situation and adopt policies accordingly" that made "..it possible for Congress to participate in this appraisal" (op. cit., supra, 1360; emphasis added).

On July 23, the Coinage Act of 1965, PL 89-91, 79 Stat. 255, that first authorized the issuance of cupronickel dimes and quarters, was enacted. Congress was

very careful to preserve the full undiluted silver content of the dollar at $1.29+ per fine troy ounce and the redeemability of silver certificates, which was "absolutely essential", according to the report of the House Banking and Currency Committee (U.S. Cong. & Adm. News, 1965, p. 2299, at 2306) which further stated (pp 2309-2310):

> " Section 102, in title 1 of the bill, makes all coins and currencies of the United States legal tender. Section 210 of the bill therefore repeals the last sentence of section 43(b)(1) of the act of May 12, 1933 (31 U.S.C. 462), which is to the same effect, in order to avoid raising any possible implication that section 102 of the bill is anything more than a restatement of existing law." (emphasis added).

Section 102 of the Coinage Act of 1965 became 31 U.S.C. Sec. 392. The paper Federal Reserve banknote(s) remained fully redeemable in silver by domestic bearers.

The Silver Certificate Act of June 24, 1967, PL 90-89, 81 Stat. 77, provided that one year after its passage any silver

certificates still outstanding would no longer be redeemable, amended 31 U.S.C. Sec. 405a-1 to authorize the continued use of silver for coinage or sale at the official rate of $1.292929292 per fine ounce, and transferred surplus silver to the Strategic Materials Stockpile, never mentioning "legal tender"!

The Act of March 18, 1968, PL 90-269, 82 Stat. 50, eliminated the requirement the Federal Reserve maintain gold reserves its outstanding banknotes and the backing for U.S. notes and Treasury notes of 1890, never mentioning "legal tender"!!

According to the report of the House Banking and Currency Committee (U.S. Cong. & Adm. News, 1968 pp 1760-1783) the intent was to make it still clearer that the U.S. would continue to meet its international commitments and that passage of the act would "have absolutely no effect upon our domestic monetary system or the soundness

of the dollar." (op. cit., supra, p. 1761). The Committee also set forth President Johnson's declarations that the "myth" that a gold reserve was necessary to tell "what prudent monetary policy should be" had long been destroyed, that gold was not needed to support the dollar because its value was derived from America's productive economy, and the reserve requirement had to be eliminated to convince foreign doubters that the entire U.S. gold stock was for sale at $35 per ounce, the only need for gold being to insure international redeemability in his view, together with a letter from Treasury Secretary Henry Fowler urging passage of the bill to eliminate the gold reserve requirement since its retention would "inhibit the further normal expansion of the currency component of our money supply..." (op. cit. pp 1761-1764; emphasis added). Like the bill it was reporting on, the House

Committee found no need to use the words "legal tender" in print.

The run was on, and the then still small "tax protest" movement began gaining adherents.

On August 15, 1971, President Nixon stunned the nation, if not the more cynical world, by "closing the gold window" with an announcement that foreign holders could no longer redeem their Yankee dollars to stop the hemorraghing, and imposed a surcharge on imports of 10 percent, thereby devaluing the dollar ex parte by a like amount, and instituted wage and price controls to "fight" inflation. More devaluations followed, and when Congress tried to catch up with the Par Value Modification Act of 1973, supra, the House Banking and Currency Committee's report confessed that passage of the act could not have any effect on the lower market value of Federal Reserve banknotes then

prevailing, which were an "accomplished fact", nor could it "restore international monetary stability". U.S. Cong. & Adm. News, 1973, p. 2050, 2053. No mention was made of "legal tender".

A holder of a Federal Reserve banknote purporting to be for 50 "dollars" sued the government to compel redemption of the face amount in lawful money; and as one would expect given the revocation of sovereign consent to be sued on the currency, set forth in 31 U.S.C. Sec. 773b, the district court dismissed his complaint and an appeal was taken. Rather than merely relying on the statute to affirm, the Ninth Circuit, without mentioning Sec. 773b, rendered a written opinion that the Federal Reserve banknote was not redeemable in specie coin, and that the appellant's contentions were "frivolous" citing the Legal Tender Case (Juilliard v. Greenman), supra, and qouting dicta from that

opinion, also citing 12 U.S.C. Sec. 411 and the Coinage Act of 1965, 31 U.S.C. Sec. 392, in support its ruling, in Milam v. United States, 524 F.2d 629 (9th Cir. 1974). Given the terms of 31 U.S.C. Sec. 773b, the result was right, but the stated reasons were all wrong.

Yet the same mistake occurred again in United States v. Wangrud, 533 F.2d 495 (9th Cir. 1976; and again in almost the identical terms in United States v. Anderson, 584 F.2d 369, 374 (10th Cir. 1978) and Mathes v. C.I.R., 576 F.2d 70 (5th Cir. 1978) as Milam seems to have been transformed into "boilerplate" by the progeny it spawned, all relying on the same dicta plucked from the Legal Tender Case.

Milam's suggestion that the post 1968 Federal Reserve banknotes are "redeemable" only in other like paper is so diametrically opposed to this Court's ruling in the Legal Tender Case as to overrule it. Nor

can Milam (or the similar decisions) be reconciled with the provision of the Federal Reserve Act that it cited, 12 U.S.C. Sec. 411 which expressly states that such notes must be redeemed in "lawful money". And, it is a struggle trying to square Milam with the other statutory authority it cited, "'Cf.' 31 U.S.C. § 392, remembering that the Coinage Act of 1965 maintained the full silver content of the dollar undiluted, continuing to provide Constitutional coinage for redemption, and the great pains taken by the responsible Committee to make it clear that the purpose of moving the provision from one section of the Code to another in the same Title 31 was to make impossible to imply that there was any change thereby being made in long standing law.

If the Coinage Act of 1965 at that time (or this) could be interpreted as making non-redeemable banknotes legal

tender, contrary to the provision of the Federal Reserve Act authorizing their issuance, it would have to be declared unconstitutional. Hepburn v. Griswold, 8 Wall. 603 (1870); the Legal Tender Cases, supra; the Legal Tender Case, supra; Perry v. United States, 294 US 330 (1935). No other legislation has even pretended to make the post 1968 Federal Reserve notes legal tender, the words have not even been mentioned.

The Court of Appeals sought to sidestep the problem by ruling that, whether or not they are constitutional, Federal Reserve banknotes are taxable income. The difficulty with that approach is that it constitutes a wholesale amendment of virtually all of the legislation mentioned herein, including the Banking (Title 12) and Monetary (Title 31) Codes as well as the Revenue Code in the interest of not coming to grips with what is probably one

of the greatest problems the federal judiciary has ever confronted- inflation.

The various Committee reports on the Bretton Woods Agreements Act of October 19, 1976, set forth in U.S. Cong. & Adm. News, 1976, p. 5935-5967 are pathetic reading. Remembering what was said in the Committee report on the Act of March 3, 1965, supra, concerning the role of gold backing serving as the means by which Congress exercised its Constitutional power to control the coinage of money and regulate the value of the currency, maintain a degree of control over the Federal Reserve and the entire financial system, resisted political pressures for unsound policies, etc., the Bretton Woods reports, fixing August 15, 1971 as the "benchmark date of the collapse" (ibid. p.5937) constitute a clear and candid confession that the Congress no longer coins, or even prints, money, and certainly do

not regulate the value of paper banknotes. Whatever influence a President may have with the Federal Reserve Board, the Congress has none at present.

Effectively freed of all restraint by the passage of the Silver Certificate Act of 1967 and the Act of March 18, 1968, by which the Congress lost control over the entire process, abdicating its powers through legislative oversight, the Federal Reserve, a privately owned, for profit, income tax exempt corporation, no longer meets the minimal criteria for a valid delegation of Congressional authority to an administrative agency. Panama Refining Co. v. Ryan, 293 US 388 (1935); Schechter Poultry Corp. v. United States, 295 US 495 (1935).

These serious issues, going to the very heart of the Constitutional structure of the federal government, rising from a lower court decision deciding an

important question of federal law, in a manner apparently in direct conflict with the applicable rulings of this Court, should be reviewed and decided here.

2. The opinion of the Court of Appeals rejecting the contention that U.S. taxpayers are being denied the Equal Protection of the Laws guaranteed by the Due Process Clause of the Fifth Amendment, if not directly conflicting with the applicable decisions of this Court, has decided an important question of federal law that has not yet been, but which properly should be, settled by this Court.

The federal government has created a a new, but clearly identifiable, minority class within the United States.

Upon first publicly announcing his Great Society, President Johnson told the electorate in a nationally televised

address that his aim was to mobilize the nation and lead it in a "War on Poverty" to forever eradicate the same. The stated strategy of the new militarism was the forcible redistribution of income coercively taxed away from those who earn it through economic activity by the production of goods and services valuable enough for voluntary exchange to those who produce nothing or whose products or services are not of sufficient value to others for unforced trade, or, in the President's own memorable words, by "going over here to all the haves and taking it away from them and bringing it over here and giving it to all the have nots."

Existing government programs such as Social Security were vastly expanded, and a plethora of new ones added. The process was soon labelled "transfer payments" by Congressional and administrative leaders; and, by the last year of President

Johnson's tenure, 1968, leading Congressmen were publicly declaring that a substantial part of the federal budget, that related primarily to the transfer payment redistribution of income, was "uncontrollable. In 1968, the Presidential candidate promising less government growth and spending won a majority of the votes cast. Nevertheless, the rapid growth of government continued. With his principal opponent promising to give every American a thousand units of Federal Reserve currency and greatly increase federal public assistance programs, President Nixon was re-elected by a historically high margin. Shortly afterwards, his Treasury Secretary, the Hon. William E. Simon publicly stated: "This government is out of control".

Although the Presidential election of 1976 was won by a candidate solemnly vowing to balance the federal budget by

the end of his term, federal taxing and spending and inflation accelerated, and as he was campaigning for reelection in 1980, the news media were widely reporting the statements of the most knowledgable Congressional leaders of the then majority party that at least 75 to 80 percent of the federal budget was "uncontrollable".

What had been reported by a team of private economists a few years earlier was confirmed by the December 10, 1979, edition of the Wall Street Journal in an article by economist A. Gary Shilling entitled "Too Many Feet in the Trough?": by the end of 1977, the last year for which full U.S. Commerce Department data was then available, 53.5 percent of the entire U.S. population was then dependent on spending by some level of government for most of their income; of which 12.9 percent were government employees and

and military personnel, and 30.4 percent were the recipients of various "transfer payments" including some 1.1 percent unemployed. Of the remaining 46.5 percent of the population, 20.0 percent were non-employed family dependents, and 26.5 percent were people engaged in "Private Sector" economic activitv as either proprietors or employees. The beneficiaries of minor government programs, such as the distribution of "free" milk to school children were excluded from the calculations.

With few exceptions, the majority class of government beneficiaries' incomes are regularly adjusted by "Cost of Living" increases based on the "Consumer Price Index", and thus "indexed" to the rate of inflation. Some of the net taxproducing minority in the "Private Sector" have obtained "cost of living allowance" ("COLA") automatic pav increases through

collective bargaining, but due to the phenomenon of graduated rate "bracket creep". an increase of their gross income of 10 percent results in an average 15 percent increase in their federal income taxes, according to Nobel laureate economist Milton Friedman. Free To Choose, (Harcourt Brace Jovanovich: New York, 1980) p. 269. A federal civil servant retired in 1970 with a final salary of $25,000 receives a pension increased to $35,000 by 1980, whereas a "Private Sector" retiree with the same salary history at a major corporation, receiving ad hoc pension from his employer plus Social Security has an income of approximately $19,000. Business Week, May 12, 1980, p. 99.

Every man having a natural right to the fruits of his own labor it necessarily follows that no other person can rightfully deprive him of those rights. The Ante-

lope, 10 Wheat 66 (1825). The legislatures of neither the states nor the nation have the power to take away one man's property for transfer to others without due process of law. Osborn v. Nicholson, 13 Wall 654 (1872). The guarantee of due process prohibits the taking of an individual' property for transfer to others except in accordance with well settled legal usages and modes of procedure with proper notice and an oppurtunity to be heard in advance. Ochoa v. Hernandez v Morales, 230 US 139 (1913).

It is well settled that the Due Process clause of the Fifth Amendment prohibits the exercise of federal taxing power in an arbitrary and capricious manner. Heiner v. Donnan, 285 US 312 (1932), citing Nicholas v. Coolidge, 274 US 531, 542; Brushaber v. Union P. R. Co., 240 US 1, 24; Tyler v. United States, 281 US 497, 504; and Hoeper v. Tax Commission, 284 US 206.

As a general rule, the exercise of the taxing and destroying power in an oppressive manner poses a responsibility of the legislature to the electorate, not the judiciary. but where the exertion of a different and forbidden power, such as the confiscation of property or a penalty for violation of a regulation disquised as a tax where regulatory power is denied by the Constitution, the Due Process clause of the Fifth Amendment is an effective barrier. A. Magnano Co. v. Hamilton, 292 US 40, 44-46 (1934). Although the requirements of Due Process of law leave free scope for the exercise of a wide discretion in determining what spending will serve the public interest, nevertheless the taxing power can be used only to effect a public purpose and does not extend to raising revenues for private purposes. Carmichael v. Southern Coal & Coke Co., 309 US 495 (1937).

Thus, traditional notions of Fifth Amendment Due Process of law prohibit the exertion of the Sixteenth Amendment destroying power to take property from those who produce it for redistribution to politically favored groups by means of "transfer payments", and that barrier is not to be run around simply by routing the cash flow through the general funds for the deduction of civil servants' commissions along the way, rather than making Peter hand it directly to Paul at the point of a public servant's pistol. But more modern notions of Due Process are not so limited.

In Brown v. Board of Education of Topeka, 347 US 483 (1954), racial segregation of state schools was found violative of the Fourteenth Amendment Equal Protection. In a companion case awising from the District of Columbia, an equally important precedent was set when the Court supplied what had been missing in the several chains

of the Constitution by which those who had overthrown their original central government attempted to bind down the new. This Court declared that although "Liberty" was not defined with great precision it was not limited to mere freedom from physical restraint and encompassed the full range of activities an individual is able to pursue and cannot be restrained except for a proper governmental objective and since both concepts stemmed from the same American ideal of fairness, Equal Protection and Due Process of law were not mutually exclusive although the latter was not as explicit a safeguard against unfairness as the former, nevertheless sufficiently unjustifiable discrimination discrimination was violative of the Due Process clause and so relied on the Fifth Amendment to rule that segregation of Washington schools by federal officials was an arbitrary deprivation of the

liberty of Negro children. Bolling v. Sharpe, 347 US 497 (1954). So was born the new doctrine that has come to be known as the "Equal Protection 'Component' of the Fifth Amendment Due Process Clause".

A decade passed before its second application in a decision that a naturalized citizen continuously residing in territory of the state of their former nationality for three years was to be deprived of citizenship was based on an "impermissable assumption" that naturalized citizens were less loyal and reliable than the native born and thus violative of the Due Process clause, in Schneider v. Rusk, 377 US 163 (1964).

The then common one year residency requirement for welfare applicants, which this Court found to be "well suited to dicourage the influx of poor families in need of assistance" thus "inhibiting" their "migration" to states paying higher

welfare, resulting in a chilling effect on the exercise of the constitutional rights of free travel and interstate migration, was deemed "invidiously" discriminatory against indigents migrating for more money as compared to indigents relocating for other reasons and since such a classifi tion served to penalize the exercise of the right of liberty of movement and was not shown to be necessary to promote a "compelling government interest", was ruled a violation of the Fourteenth Amendment on the part of the states and the Equal Protection of the Fifth Amendment Due Process clause by the District of Columbia. Shapiro v. Thompson, 394 US 618 (1969).

An Air Force requirement that a husband be shown to be more than half dependent upon a female service member for support to obtain the full medical, dental and housing allowances extended to the

entire families of male personnel without proof of actual dependency, although "administratively efficacious", was ruled an unreasonable sexual classification and so inherently invidious discrimination as to be a denial of the Equal Protection guarantee of the Fifth Amendment Due Process clause in Frontiero v. Richardson, 411 US 677 (1973). The definition of "households" as including only living groups of related family members to keep "hippies" and other commune dwellers from abusing the food stamp script program was, by the application of traditional Fourteenth Amendment Equal Protection analytical criteria to determine whether the legislative classification was rationally related to a legitimate government interest, found to be an irrational classification and violative of the Equal Protection Component of the Fifth Amendment in U.S. Dept. of Agriculture v. Moreno, 413 US 528 (1973).

Applying the same criteria, the denial of GI Bill educational benefits to a conscientious objector who did two years "alternate civilian service" was upheld in Johnson v. Robinson, 415 US 361 (1974).

Granting Social Security payments to surviving female parents to permit them to stay at home devoting full time to their offspring and denying them to surviving fathers was deemed an "entirely irrational" discrimination against their children based on the sex of the surviving parent and so a denial Fifth Amendment Equal Protection as determined by Fourteenth Amendment analytical methods in Weinberger v. Wiesenfield, 420 US 636 (1975).

Because the Due Process clause of the Fifth Amendment requires traditional equal protection analysis of federal measures it therefore has a substantive, as well as a procedural aspect. Hampton v. Mow Sun Wong,

426 US 88 (1976); Delaware Tribal Business Comm. v. Weeks, 430 US 73 (1977).

In Hampton v. Mow Sun Wong, supra, it was held that where there was no indication that the government had made any considered evaluation of the relative desireability of a regulation excluding resident aliens from competitive civil service employment (Post Office) versus a rule enlarging the pool of eligible persons, a fair balancing of the general public interest in avoiding a wholesale deprivation of employment opputunities required rejection of the government's argument of administrative convenience and the discharge from, or denial of, federal jobs deprived resident aliens of their liberty contrary to the Fifth Amendment.

Stating that Graham v. Richardson, 403 US 365 (1971) had discredited the view that welfare payments were a "privilege", this Court decided that a provision deny-

ing AFDC checks to unemployed mothers when the families of unemployed fathers were granted the same to reduce the incentive for abandonment, since deterring desertion was not deemed substantially related to the attainment of any sufficiently important and valid statutory goals or the achievement of an important government objective and could not be justified because its impact was felt by family units rather than just female parents, was part of the "baggage of sexual stereotypes", and thus a gender qualification so invidiously discriminatory as to violate the Equal Protection of Fifth Amendment Due Process. Califano v. Westcott, 443 US 76 (1979).

Social Security "Mothers' insurance benefits" being rationally related to the goal of easing family deprivation due to the death of their wage-earner and the discrimination against illegitimate chil-

dren as a class incidental and the economic loss not the same, denying such payments to unwed mothers is not a denial of Fifth Amendment Equal Protection. Califano v. Boles, 443 US 282 (1979). But where sired by a civil servant who stayed long enough for there to be a parent-child relationship before deserting them and dying, depriving them of Civil Service Act survivors' annuities would be so invidiously discriminatory and raise such a serious question question of deprivation of the equal legal protection guaranteed by the Fifth Amendment that an erroneous interpretation must be avoided by giving the Act a more "fair and reasonable" construction" providing like payments to the unwed mothers of federal employees' illicit offspring. United States v. Clark, 445 US 23 (1980).

As unrealistic as it is to expect either public officials or the judiciary to

be sufficiently versed in the rigors of experimental or statistical techniques, it but illustrates that proving broad sociological propositions by statistics is dubious business inevitiably in tension with the normative philosophy underlying Equal Protection; thus the requirement that a class distinction be clearly shown to be substantially related to the achievement of a proper statutory objective and the fact that a power clearly granted by some other provision of the Constitution or one of the Amendments thereto is being exercised cannot save governmental discrimination otherwise invidious from invalidation as a denial of Equal Protection. Craig v. Boren, 429 US 190, 204 (1976).

The United States Constitution is supposedly no respecter of financial status and rich or poor are accorded equal rights under it so the presence of wealth or its absence is not a basis for valid class

discrimination but a cause of suspicion to be subjected to a more rigid scrutiny than other classifications where a distinction based on wealth interferes with a fundamental right. 16A Am Jur 2d, Constitutional Law, Sec. 774, p. 900.

The substantive shield of the Equal Protection Component of the Fifth Amendment against government interference with fundamental rights and interests is higher, broader, and stronger than that of Due Process alone, for few principles are so well settled as the proposition that it prohibits electoral discrimination.

In a free country no right is more precious than that of voting in the election of politicians who have the power to make laws we have to live under; even the most basic of all other rights are mere illusions if the right to vote is undermined by dilution through unequal weighting in federal elections by the drawing of

Congressional district boundaries. Wesberry v. Sanders, 376 US 1, 14 (1964)

Sophisticated as well as simple minded discrimination is forbidden; the voting franchise being preservative of all other rights and touching a highly sensitive area of basic civil rights, invidious discrimination against groups or types of individuals is impermissable since every citizen has an inalienable right to full and effective participation in the political processes of his legislative bodies and each voice in the election of their members must be equally effective, thus the concept of Equal Protection mandates a rule of "one man-one vote". Reynolds v. Sims, 377 US 533 (1964).

An individual is not to be deprived of Equal Protection by limiting access to the ballot because of such extraneous conditions as race; Gomillion v. Lightfoot, 364 US 339 (1960); military status, Car-

rington v. Rash, 380 US 89 (1965); wealth, Harper v. Virginia Board of Elections, 383 US 663 (1966); tax status, Kramer v. Union Free School Dist., 395 US 621 (1969); nor type of election, Cipriano v. City of Houma, 395 US 701 (1969). The equal weight of each individual's ballot may not be diluted by geographic discrimination. Gray v. Sanders, 372 US 368 (1963). Even federal military personnel are entitled to votes of undiluted weight in state elections. Davis v. Mann, 377 US 691 (1964).

Not even the approval of a majority of the entire electorate of an apportionment plan in a popular referendum can justify that which otherwise denies Equal Protection in the voting booths. Lucas v. Colorado General Assembly, 377 US 713, 736-737 (1964). The Sovereign people themself are subject to all constitutional limitations not repealed and government may not place any particular group at a political

disadvantage by making it more difficult to enact legislation on their behalf than it may give them less representation than other groups of comparable size or dilute their individual votes. Hunter v. Erickson, 393 US 385, 392-393 (1969).

But if no "discrete and insular" minority is singled out for special treatment and no discernible, independently identifiable group, category, or sector of the population can be said to have been "fenced out" from the franchise, where the credit of infants and taxpayers yet unborn is to be jeopardized with more public debt, it is not unreasonable to give disproportionate power to the minority by requiring more than a majority vote so long such a provision does not discriminate or authorize discrimination against any identifiable class. Gordon v. Lance, 403 US 1, 5-7 (1971). If Gordon v. Lance is an exception, it appears to be the only

one to the general rule that the limitations of Due Process and Equal Protection flatly prohibit the rigging of, or tampering with, state or federal elections whether by interference with the franchise or subtler, more sophisticated means of unbalancing the electoral scales. Baker v. Carr, 369 US 186 (1962); even with the express approval of the majority, Lucas v. Colorado General Assembly, supra; Hunter v. Erickson, supra.

Webster's Third New International Dictionary, Unabridged, supra, p.1190, indicates that the key word in Equal Protection analysis is derived from the Latin term for "envy" and defines "invidious" as "1 : detrimental to reputation: DEFAMATION....2 : likely to cause discontent or animosity or envy....3 : full of envious resentment: JEALOUS....4 a : of an unpleasant or objectionable nature....b : causing harm or resentment: INJURIOUS..."

and lists "hateful" as the synonym. The Random House Dictionary (Ballantine Books: New York, 1978) p. 478, defines the same word as "1. causing or tending to cause animosity or resentment..."

On July 14, 1981, the Tax Foundation Inc., publicly announced from Washington that federal, state and local units of government will have spent a total of $1.07 trillion by the close of the fiscal year ending September 30, with the federal government spending $710.4 billion of the estimated total. The latter figure amounts to 66.39 percent of all government spending. On July 22, 1981, the U.S. Commerce Department publicly announced for the month of June, Americans' personal income was officially estimated at a seasonally adjusted annual rate of $2.4 trillion. Assuming that both entities reporting were referring to the same twelve month period, the combined effective rate of taxation by

all levels of government calculates to a total of 44.58 percent. It is submitted that that is clearly confiscatory by any yardstick, even without including the current rate of inflation, "cruelest tax of all", to bring the total to 50.6 to 56.7 percent or more.

As many, including Congressman Phillip Crane have noted, not even medieval serfs ever paid such a high rate of tribute as that being extracted from the minority subclass must labor for a livelihood in the "Private Sector". Since the end of President Johnson's tenure and our withdrawal from Viet Nam, with the exception of inflation itself, nothing has caused such mounting discontent, animosity and resentment among the 1 out of 4 Americans producing anything to buy with a government check as the income tax policies that began with the "War on Poverty".

In the lower court it was argued that

the use of the power to tax income to compel those who labor in the market economy for their daily bread with muscle and mind to surrender the fruits of their efforts for redistribution to the new majority of the entire electorate that either works for government or doesn't work has reached the stage where it is both a deprivation of property and a taking of private property without just compensation that is twice violative of the Due Process guaranteed by the Fifth Amendment.

It was further argued that it has an increasingly chilling effect on the exercise of the Liberty of Labor that is not rationally related to any legitimate governmental objective and is not necessary to promote a compelling government interest yet constitutes a wholly arbitrary class distinction based on economic status and a division of the electorate into political classes consisting of the New

Majority of taxconsumers and a minority of net-taxproducers; and that both such classifications, economic and political, are invidious discrimination that is doubly violative of the Equal Protection Component of the Fifth Amendment Due Process clause. In addition, given the bizarre effects on the graduated rate schedules of inflation, producing the "bracket creep" effect of taxing what are now nominal incomes at rates designed to "soak the rich" the graduated income tax rate schedules have become violative of both Due Process and Fifth Amendment Equal Protection, and that the practice escalating transfer payments to civil servants and nonworkers to match the Consumer Price Index while refusing or neglecting to "index" income tax rates to the rate of inflation is discrimination so invidious as to be insidiously violative of contemporary Fifth Amendment Equal Protection.

To these numerous contentions based on both the purely Due Process aspect of the Fifth Amendment and its more recently evolved substantive Equal Protection component, counsel for the government made no reply either in the Answering Brief or in oral argument.

In Melton v. Kurtz, 575 F.2d 547 (5th Cir. 1978), a per curiam ruling on the pro se appeal of a layman from a summary judgment for the Commissioner of Internal Revenue, the court stated:

> " We are confronted here with a taxpayer who seeks both declaratory and injunctive relief with respect to federal taxes. Neither injuctive nor declaratory relief are available in this case.....
> Taxpayer asserts in his complaint that the graduated or progressive income tax is unconstitutional because it denies taxpayers equal protection. The Supreme Court has considered this contention and found it to be without merit. Brushaber v. Union Pacific Railroad Company, 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed. 493 (1916).

In its terse Memorandum Opinion giving rise to this petition, the court below

said:

> " Prior authority has rejected Mangrum's arguments that:.....(3) income taxation denies Fifth Amendment due process and implicit equal protection rights, see Brushaber v. Union Pacific R.R. Co., 240 U.S. 1, 24-25 (1916); Melton v. Kurtz, 575 F.2d 547, 548 (5th Cir. 1978)."

In this off-hand manner an extremely important point of federal law with great national repercussions was decided, and wrongly.

Assuming for the sake of argument only that this Court's 1916 decision upholding the income tax provisions in the 1913 Tariff Act in a stockholder's derivative action to restrain a corporation from complying with the law, wherein the standing appears to have been on somewhat tenuous ground, in Brushaber v. Union Pacific R. Co., supra, is applicable to the facts that have developed since the mid-1960s, the most it can stand for is the point that the graduated rate schedules alone do not run afoul of traditional Fifth Amendment

due process, even of the substantive kind, it is clearly no authority for the notion that the requirements of the Equal Protection component of that clause are still being satisfied. There was no Fifth Amendment Equal Protection guarantee for anyone, black, white, or resident alien in 1916. Moreover, this Court itself cited the Brushaber decision as standing for the proposition that the Due Process clause does in fact prohibit the exercise of the power to tax incomes in an arbitrary and capricious manner in its 1932 opinion in Heiner v. Donnan, supra.

In the several decisions on the point since Bolling v. Sharpe, supra, this Court has clearly shown itself to be not at all inclined to make exceptions by fencing out claimants contending that they are being denied Equal Protection of federal law, but has repeatedly ruled that such are to be closely scrutinized with the official

defenses and denials thrown up by the challenged authorities critically analyzed by the traditional time-tested methods applied to state actions arising under the Fourteenth Amendment Equal Protection clause.

Having wholly failed to adhere to the rules evolved by this Court in the line of cases flowing from Bolling v. Sharpe in 1954, culminating in Hampton v. Mow Sun Wong, supra, in 1976, wherein the majority came to the logical conclusion that the rule of Equal Protection of federal law is substantive, with a learned dissent by Justice Rehnquist that thoroughly dispels any notion that the majority was not fully cognizant of the ramifications of its stated views, it is manifest that in not applying the required Fourteenth Amendment analytical criteria first the Fifth Circuit in Melton v. Kurtz, supra, and now the Ninth Circuit in the instant matter have clearly erred.

CONCLUSION

Although Congress's stated intent was always to forever preserve and defend the full value of that synonym for soundness, the Yankee dollar in both domestic and international commerce, the cumulative effect of its several enactments over the period from March, 1965, to the spring and summer of 1968, when the silver and gold backing were eased from under the currency was to totally divest the national legislature of its power to control the rate at which new cash and substitutes for cash are created and regulate its value, other than by its ability cause deficits to be "monetarized".

While the Federal Reserve Act is still larded with phrases indicating that the purpose of establishing a new privately owned central bank operated for profit was to greatly reduce the severity of recessions and eliminate inflation by placing the en-

tire machinery by which credit substitutes for actual money are created through the banking process in the hands of banking experts independant of any political influence on the eve of Christmas eve, 1913, even after nearly 70 years experience it seems that they still haven't got it right.

However, the Congress having lost its Constitutional authority through legislative oversight, a real revolution has taken place and the Federal Reserve Board of Governors has sole control over the creation of new currency and credit to the extent that any single body can be said to still be in "control".

The history from 1914 to 1934 and 1934 to 1968 clearly indicates that even when subjected to some discipline by the need to maintain Congressionally determined gold reserves, the Federal Reserve is quite capable of inflating, and that the foundations of the Republic will not fracture if the

Congress were to be restored to some modicum of control, even though it may mean that the value of the dollar will have to be recalibrated at $2000 to the ounce of gold or more. If the situation that has prevailed since 1968 is legitimate, then it both greatly needs and deserves the full sanction of the nation's highest judicial body.

Similarly, if the new minority of net taxproducers is not entitled to the same Equal Protection of the Fifth Amendment Due Process clause extended to the New Majority coalition of public servants, retirees, disabled, handicapped, poor, etc., under the line of decisions in which this Court has evolved the doctrine, those rulings giving no indication that any exceptions were intended, if the taxpayers are to be so excluded, it should properly be this Court that makes the exception, and determines this very important question of

of federal law.

Respectfully Submitted,

HARRY J. MANGRUM, JR.
Petitioner Pro se
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APPENDIX

OPINION OF THE COURT BELOW

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	FILED
Plaintiff-Appellee,	APR 24 1981 Richard H. Deane, Clerk, U.S. Court of Appeals
vs.	
HARRY J. MANGRUM, JR.,	No. 80-1474 D.C. No. CR LV 80-32 HEC
Defendant-Appellant.	MEMORANDUM

Appeal from the United States District Court
for the District of Nevada
Harry E. Claiborne, District Judge, Presiding
Argued and Submitted april 9, 1981

Before: PREGERSON and REINHARDT, Circuit Judges, and HARDY,* District Judge.

Mangrum was convicted of willfully failing to file income tax returns for the years 1973 and 1974. On appeal, he urges that the district court erred in denying his motions to dismiss the indictment, that

* The Honorable Charles L. Hardy, United States District Judge for the District of Arizona, sitting by designation.

the Government has no authority to tax federal reserve notes. We affirm.

Mangrum assigns error to the district court's denial of his motions to dismiss the indictment, made after the pretrial motions deadline had passed. He argues that, because the motions challenged the court's jurisdiction, they remained timely at any stage of the proceedings.

Federal Rule of Criminal Procedure 12 (b)(2) provides that dismissal motions challenging jurisdiction are always timely. Mangrum's first motion, asserting that the Sixteenth Amendment was not properly ratified, went to the sufficiency of the statute under which Mangrum was prosecuted, and not to the court's jurisdiction pursuant to that statute. Therefore, the court properly struck the motion as untimely under Rule 12(c)(2).

The court properly treated Mangrum's second dismissal motion, made at trial and

asserting the invalidity of federal reserve notes, as a motion for acquittal. Even if the court erred in denying the motions on these grounds, the error was harmless because Mangrum's tax protest grounds were meritless. See United States v. Scott, 521 F.2d 1188, 1192-93 (9th Cir. 1975), cert. denied, 424 U.S. 955 (1976).

Mangrum asserts that because federal reserve notes are not "dollars", taxation based on such notes is impermissable. This court, however, has summarily rejected the the argument that federal reserve notes are not "dollars" within the meaning of the tax statutes. See United States v. Kelley, 539 F.2d 1199, 1203 (9th Cir.), cert. denied, 429 U.S. 963 (1976); United States v. Wangrud, 533 F.2d 495, 495-96 (9th Cir.), cert. denied, 429 U.S. 818 (1976).

Mangrum's constitutional claims are equally groundless. Prior authority has rejected Mangrum's arguments that:(1) the

Sixteenth Amendment was not properly ratified, see United States v. Scott, 521 F.2d 1188, 1192 (9th Cir. 1975), cert. denied, 424 U.S. 955 (1976); (2) forcible taxation violates First Amendment free exercise rights, cf. Kelly v. Terry, 629 F.2d 572, 573 (9th Cir. 1980) (social security taxes); (3) income taxation denies Fifth Amendment due process and implicit equal protection rights, see Brushaber v. Union Pacific R.R. Co., 240 U.S. 1, 24-25 (1916); Melton v. Kurtz, 575 F.2d 547, 548 (5th Cir. 1978); (4) taxation disparages a common law or Ninth Amendment "right to work," see United States v. Russell, 585 F.2d 368, 370 (8th Cir. 1978); and (5) taxation violates the Tenth and Thirteenth Amendments, see United States v. Macleod, 436 F.2d 947, 951 (8th Cir.), cert. denied, 402 U.S. 907 (1971).

(3)

Finally, the constitutional, statutory, and political protestations made below in

no way negate willfulness to violate the tax codes. See United States v. Romero, No. 80-1096, slip op. at 652 (9th Cir. Mar. 6, 1981).

AFFIRMED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
MAY 26 1981
RICHARD H. DEANE
Clerk, U.S. Court of Appeals

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
HARRY J. MANGRUM, JR.,
Defendant-Appellant.

No. 80-1474

ORDER

Before: PREGERSON and REINHARDT, Circuit Judges, and HARDY,* District Judge

Appellant's petition for rehearing is denied.

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* The Honorable Charles L. Hardy, United States District Judge for the District of Arizona, sitting by designation.

CONSTITUTIONAL PROVISIONS AND STATUTES

Due to the voluminous nature of the items here required under the Court's Rule 21.1.(f) they must be separately presented.

PROOF OF SERVICE

It is hereby certified that on this day the undersigned duly served the within PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT by placing three (3) copies thereof in separate sealed envelopes, upon first class postage was fully prepaid, addressed to:

The Solicitor General
Department of Justice
Washington, D.C. 20530

Tax Division
Department of Justice
Washington, D.C. 20530

LAMOND R. MILLS
United States Attorney
District of Nevada
300 Las Vegas Boulevard So.
Post Office Box 16030
Las Vegas, Nevada 89101

and depositing the same in the United States Mails on

This _____day of July, 1981.

_____
HARRY J. MANGRUM, JR., ESQ.
Petitioner pro se